19

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1918

## No. [redacted]441

THE UNITED STATES *EX REL.* WILLIAM F. ARANT,
PLAINTIFF IN ERROR,

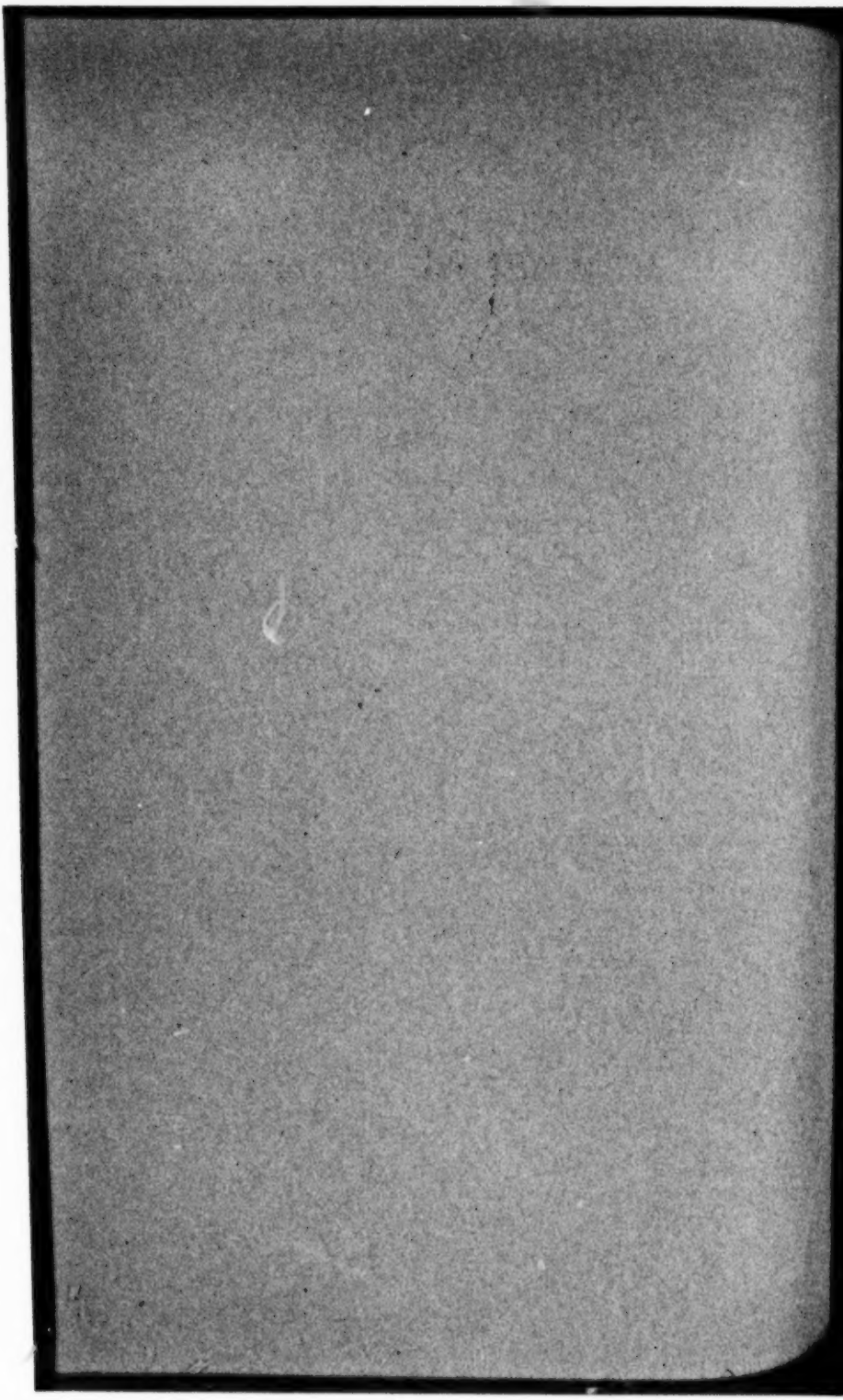
*vs.*

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 8, 1918.

(26,495)



(26,495)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1917.

# No. 1028.

THE UNITED STATES EX REL. WILLIAM F. ARANT, PLAINTIFF IN ERROR,

*vs.*

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1918.

a TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia, October Term, 1915.

No. 2853.

No. 9, Special Calendar.

No. 1, Special Calendar, January Term, 1918.

UNITED STATES OF AMERICA on the Relation of WILLIAM F. ARANT, Appellant,

vs.

FRANKLIN K. LANE, Secretary of the Interior.

Appeal from the Supreme Court of the District of Columbia.

Filed July 14, 1915; Printed August 18, 1915.

1 Court of Appeals of the District of Columbia.

No. 2853.

U. S. OF A. ex Rel. WILLIAM F. ARANT, Appellant,

vs.

FRANKLIN K. LANE, Secretary of the Interior.

Supreme Court of the District of Columbia.

At Law. No. 57986.

UNITED STATES OF AMERICA on the Relation of WILLIAM F. ARANT, Relator,

vs.

FRANKLIN K. LANE, Secretary of the Interior, Defendant.

UNITED STATES OF AMERICA,
*District of Columbia*, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had in the above-entitled cause, to wit:

*Petition for Writ of Mandamus.*

Filed April 30, 1915.

In the Supreme Court of the District of Columbia.

At Law. No. 57986.

UNITED STATES OF AMERICA on the Relation of WILLIAM F. ARANT, Relator,

v.

FRANKLIN K. LANE, Secretary of the Interior, Defendant.

The petition of William F. Arant respectfully shows to the Court:

1. He is a citizen of the United States, commorant in the town of Klamath Falls, in the state of Oregon, and files this petition in his own right as hereinafter more fully shown.

2 2. The defendant is a citizen of the United States, commorant in the District of Columbia, and is sued herein by virtue of his office as Secretary of the Interior.

3. On, to wit, the 25th day of June, 1903, relator was duly appointed superintendent of Crater Lake National Park in the state of Oregon, at a salary of one thousand dollars per annum.

By virtue of said appointment relator became and thereafter continued to be a person in the classified civil service of the United States.

In this connection relator avers that on the 31st day of August, 1912, there was sent to him, as such superintendent, by the then Secretary of the Interior, a circular letter issued by the Department of the Interior, by direction of such Secretary aforesaid, for the information of the officers and employees of said department, said circular containing an excerpt from the act of Congress making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1913, and for other purposes, approved August 24, 1912, being section six (6) of said act; with instructions to relator that he note the same and be governed accordingly.

4. Upon the appointment of relator to the position aforesaid, he entered upon the performance of the duties incident to said position and thereafter diligently, efficiently and faithfully performed the same until, to wit; the 20th day of July, 1913, when he ceased so to do under the circumstances hereinafter more fully set forth.

5. On to wit, the 7th day of June, 1913, relator, while engaged in the performance of his duties as such superintendent, as aforesaid, received from said defendant a telegraphic communication, as follows:

Washington, D. C., June 7, 1913.

"Mr. William F. Arant, Superintendent of Crater Lake National Park, Crater Lake, Oregon.

SIR: I have to request that you forward to this office your resignation as Superintendent of Crater Lake National Park.

FRANKLIN K. LANE,
*Secretary of the Interior.*"

In response to said communication relator, on, to wit, the 17th day of June, 1913, addressed to said defendant a letter wherein he invited said defendant's attention to the fact that he, relator, was a person in the classified civil service of the United States under and by virtue of the provisions of law then existing with relation to the civil service of the United States; protested against his resignation being called for; invoked the protection of the laws relating to the civil service of the United States, and protested against his removal from office in the absence of reasons therefor in writing and notice thereof, a copy of any charges preferred against him and a reasonable time within which to answer the same in writing.

In answer to said letter, relator received from said defendant a telegraphic communication as follows:

3 Washington, D. C., June 28, 1913.

"Supt. Arant, Crater Lake, Oreg.:

Answering letter 17th, you are hereby removed from position superintendent Crater Lake Park, effective close June 30. Transfer property new Supt. Steel July 1.

LANE, *Secretary.*"

Thereafter and on, to wit, the 7th day of July, 1913, relator received from said defendant a telegraphic communication demanding that he "account and transfer property to Supt. Steel. Failing which matter will be taken up with Department of Justice and your successor put in possession. Your pay stopped June 30."

To this communication relator replied by telegram sent said defendant, as follows:

Klamath Falls, Oregon, July 8, 1913.

"To Honorable Secretary Interior, Washington, D. C.:

Answering your telegram seventh am ready to make complete accounting but am compelled to refuse to relinquish my position or transfer property being convinced removal order unlawful.

ARANT,
*Superintendent.*"

6. Thereafter, to wit, on Sunday the 20th day of July, 1913, the United States Marshal for the state of Oregon, claiming to be acting

pursuant to instructions contained in a letter to him from the United States District Attorney at Portland, Oregon, together with said Steel and a number of other men, waited upon relator in his office as said superintendent and the said Marshal thereupon demanded of relator that he surrender possession of said office and deliver the same to said Steel.

Upon relator refusing so to surrender said office, said Marshal, with the assistance of a large number of other persons, without any lawful warrant or other legal writ or process authorizing him so to do, violently and with force and arms seized relator and removed him from said office.

Said Marshal thereupon reentered the building in which said office of Superintendent was located, drove relator's family therefrom, took possession of said building and office, the property, records and fixtures pertaining to said office, together with the property and effects of relator including money, books and valuable papers. Whereupon said Marshal delivered said building and office, and the property, records and fixtures pertaining to said office into the possession of said Steel.

7. Relator further shows to the court that as such Superintendent as aforesaid he was a person in the classified civil service of the United States within the provisions of law relating to the civil service of the United States, and the rules and regulations of the United States Civil Service Commission, promulgated according to law; that at the time of his removal he was held and recognized by said Civil Service Commission to be a person in the classified civil service
4 of the United States, under the law and said rules and regulations; that it was the duty of said defendant to aid, in all proper ways, in carrying said rules and regulations into effect; that as a person in the classified civil service of the United States he could not be lawfully removed therefrom except for such cause as would promote the efficiency of said service and for reasons given in writing and he was entitled to notice of the same and any charges preferred against him, and to be furnished with a copy thereof, and allowed a reasonable time for personally answering the same in writing, and affidavits in support thereof.

8. Notwithstanding the premises aforesaid, said defendant, in violation of law and of the duty resting upon him in the premises and in violation of the rights of relator, without just cause and without reasons given in writing and without furnishing relator a copy of charges, if any, that were preferred against him, and without allowing relator reasonable or other time for personally answering the charges, if any, that were preferred against him and, in the absence of any such charges, arbitrarily, and not in the exercise of any discretion vested in him, wilfully and violently, in the manner hereinbefore more fully set forth, removed relator from his office aforesaid.

9. Relator further shows that on, to wit: the 1st day of July, 1913, he notified said defendant, in writing, that he, relator, was ready, willing and able to perform all the duties and work pertaining to the office of Superintendent as aforesaid; and he has been so ready,

willing and able to perform such duties from the time of his appointment to the present time.

10. From the time of his unlawful removal from said position as aforesaid, relator has made every reasonable effort to have his rights in the premises accorded him and to be restored to the office of Superintendent as aforesaid, but without avail.

By and through his attorneys relator has formally requested of said defendant that he restore him, relator, to the office of Superintendent, as aforesaid, but said defendant declined and refused and still refuses to comply with such request.

Wherefore, inasmuch as relator is without remedy in the premises, except a writ of mandamus to said defendant to compel him to vacate said order of June 28, 1913, removing relator from said office and to restore him to his said office of Superintendent of Crater Lake National Park in the state of Oregon, the premises considered relator prays:

1. That process may issue requiring the defendant to appear and answer this petition.

2. That a writ of mandamus may go to the defendant requiring him forthwith to vacate the order of June 28, 1913, and to restore the relator to the office of Superintendent of Crater Lake National Park in the state of Oregon.

3. That a rule may be laid according to law, requiring the defendant to show cause why a writ of mandamus shall not issue as prayed herein.

5 4. That relator may have such other and further relief as may be just and proper.

UNITED STATES OF AMERICA ON THE
RELATION OF WILLIAM F. ARANT,
By W. F. ARANT, *Relator.*

MADDOX AND GATLEY,
*Attorneys for Relator.*
J. H. CARNAHAN,
*Of Counsel for Relator.*

STATE OF OREGON,
*County of Klamath, ss:*

William F. Arant, being first duly sworn, deposes and says: I am the relator in the foregoing petition by me subscribed; I have read over the foregoing petition and know the contents thereof; the matters and things therein stated on personal knowledge are true and those stated on information and belief, I believe to be true.

W. F. ARANT.

Subscribed and sworn to before me this 23rd day of April, A. D. 1915.

[SEAL.] PERRY O. DE LAP,
*Notary Public.*

*Memorandum.*

April 30, 1915.—Rule to Show Cause issued returnable May 11, 1915.

*Return to Rule to Show Cause.*

Filed May 10, 1915.

* * * * * * *

Comes now Franklin K. Lane, Secretary of the Interior, respondent in the above-entitled cause, and in answer to the rule to show cause why mandamus should not issue as prayed in relator's petition, says:

1-2. He admits the allegations of paragraphs 1 and 2.

3. Answering the allegations of paragraph 3, he states the facts to be as hereinafter set forth and not otherwise, to wit that on September 26, 1902, relator became by appointment of the then Secretary of the Interior, Superintendent of Crater Lake National Park, at a salary of $900, and thereafter, effective from July 1, 1903, his salary was increased to $1,000; that said appointment was made without examination, directly by the Secretary and in no manner through or on certification from or with the knowledge or action in any manner by the Civil Service Commission, or with regard to civil service rules, for the reason that the position of superintendent of said park

6 was and is in the "excepted" class of the public civil service according to Schedule A of the Rules and Regulations of said Civil Service Commission; that such appointment in such manner was and is purely a personal appointment, the tenure being at the pleasure of the appointing power; that while the relator under such appointment may be said to have become a person in the classified civil service of the public service as distinguished from the military, naval, legislative, or judicial service of the United States, he did not thereby acquire a personal civil service status rendering him eligible for appointment or transfer to any place in such service not excepted from examination, competitive or otherwise, and is not a person in the "classified civil service" whose removal from the position he occupied was required by law to be accomplished in any manner other than that followed in regard to relator. And as to the allegations of the last paragraph of said paragraph 3, while he has no personal knowledge of the transmittal of the alleged circular, he says that such was probably the fact because it was and is the custom to transmit circulars of information from time to time for the guidance of officers in immediate charge of employees in the several branches and stations of departmental work. Except as herein admitted by the foregoing averment, he denies otherwise the averments of said paragraph 3; and he further denies that the sending or not sending of any such circular would be at all material to any issue in this case.

4. Answering the allegations of paragraph 4, he denies that relator has efficiently and faithfully performed the duties incident to his position during his incumbency thereof; otherwise he admits the averments of said paragraph.

5. He admits the allegations of paragraph 5, except that the communication dated June 7, 1913, was by telegram stating the fact to be that said communication was by letter personally signed by the respondent, in words and figures as follows:

Department of the Interior,

Washington, June 7, 1913.

Mr. William F. Arant, Klamath Falls, Oregon.

SIR: I have to request that you tender your resignation as Superintendent of Crater Lake National Park, to take effect upon the appointment and qualification of your successor.

Respectfully,

FRANKLIN K. LANE, *Secretary.*

6. He admits that the United States Marshal for the District of Oregon, acting under directions from the Department of Justice, but duly, lawfully, and without unnecessary force, ousted relator from the room or place theretofore occupied by him as an office and from the buildings of the United States which he was then, on the date stated in paragraph 6, unlawfully occupying and withholding from the possession of the person officially authorized and directed to occupy and possess the same; but respondent says that the means or manner of relator's removal from said places and buildings is in no manner material to any issue in this cause.

7 7. He is advised and therefore avers that the allegations of paragraph 7 amount to conclusions of law which he need not answer; but he says that relator was not a person in the classified civil service of the United States and can be so denominated only in the sense and with the limitations hereinbefore set forth in answer to paragraph 3 of said petition; that during his incumbency of said office, the Civil Service Commission had no record or official knowledge of his appointment to or incumbency of said office; and that it is not true that by virtue of relator's said appointment to and occupation of said office, he became a person in the classified civil service in the sense that he could not be removed therefrom without written charges or reasons therefor and with notice thereof, under any existing law and especially under the provisions of section 6 of the act of August 24, 1912, in this that it was not within the intent or purpose of Congress in enacting said last-mentioned law to make its provisions applicable, in using the term "the classified civil service," other than to those in the competitive branch thereof, to which the relator neither belonged nor was eligible to belong.

8. He denies the allegations of paragraph 8 save in this that he admits that for reasons deemed by him sufficient and without written charges he removed the relator from the office of superintendent of said park, upon relator's refusal to resign; and that in so doing he

was acting upon the advice and following the opinion of the Attorney General of the United States, as to his authority to make removals in the manner above set out.

9. He admits the allegations of paragraph 9 in so far as it avers notification in writing (the correct date whereof being July 31, 1913, and not July 1, 1913, as averred) by relator to respondent that he was ready, willing, and able to perform all the work and duties of superintendent of said park, but denies that relator has been ready, willing, and able to perform such duties from the time of his appointment to the present time and states the fact to be that prior to June 7, 1913, and up to July 1, 1913, he was not performing said duties to the satisfaction of respondent; and whether since July 1, 1913, he has been willing and able to perform such duties, respondent has no knowledge other than as set forth in the petition.

10. He denies the allegations of paragraph 10 to the extent that the same attempt to show that he has made every reasonable effort to be restored to the office of superintendent as aforesaid, in this: That if relator were improperly or unlawfully removed from said office, under circumstances such as to justify the interference of the courts, such condition existed immediately upon relator's removal from office and upon the Secretary's refusal to continue him in said office; notwithstanding which and notwithstanding that since said time, to wit, July 1, 1913, another person has been appointed to and has discharged the duties of said office and has received the salary and allowance therefor appropriated from time to time by Congress, the relator did not seek recourse to the courts until the lapse of nearly two years, and therein has by his gross laches barred any right to the relief sought if any such right ever existed.

8 Wherefore, having made complete return to the rule herein issued, he prays that the same may be discharged, that the petition may be dismissed with his reasonable costs, and that he may be permitted to go hence without day.

FRANKLIN K. LANE,
*Secretary of the Interior.*

PRESTON C. WEST,
*Solicitor for the Department of the Interior.*
C. EDWARD WRIGHT,
*Assistant Attorney.*

DISTRICT OF COLUMBIA, *ss:*

Franklin K. Lane, Secretary of the Interior, being first duly sworn, says that he has read over the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein set forth he is informed are true and he believes them to be true.

FRANKLIN K. LANE,
*Secretary of the Interior.*

Subscribed and sworn to this 8th day of May, 1915. Before me
[SEAL.] W. BERTRAND ACKER,
*Notary Public in and for the District of Columbia.*

(Endorsed.)

Service acknowledged May 10, 1915.

MADDOX AND GATLEY,
*Att'y- for Relator.*

*Demurrer to Return.*

Filed May 15, 1915.

* * * * * * *

The Relator says that the return of the defendant to the rule to show cause, heretofore issued herein, is bad in substance.

1. Because no cause is shown in and by said return why a writ of mandamus should not issue as prayed in the Relator's petition.

2. Because under the admitted facts of said return the Relator is entitled to the issuance of a writ of mandamus as prayed in and by his petition.

MADDOX AND GATLEY,
J. H. CARNAHAN,
*Attorneys for Relator.*

9 Messrs. Preston C. West and C. Edward Wright, Attorneys for Defendant:

Please take notice that the foregoing demurrer will be heard before Mr. Justice Stafford on Monday, the 24th day of May, 1915, at three o'clock P. M., or as soon thereafter as counsel can be heard.

MADDOX AND GATLEY,
J. H. CARNAHAN,
*Attorneys for Relator.*

*Order Overruling Demurrer and Dismissing Petition.*

Filed June 15, 1915.

* * * * * * *

This cause coming on to be heard upon the demurrer of the relator to the return of the defendant after consideration thereof, it is, this 15" day of June, 1915, ordered that said demurrer be and the same is hereby overruled. And said relator electing to stand upon his demurrer, it is further ordered that the petition of relator be dismissed with costs.

WENDELL P. STAFFORD, *Justice.*

From the foregoing judgment the relator in open court notes an appeal to the Court of Appeals and the penalty of a bond for costs on said appeal is hereby fixed at $100, with leave to said relator to deposit in lieu of such bond the sum of $50.00.

WENDELL P. STAFFORD, *Justice.*

*Memorandum.*

June 28, 1915.—Appeal bond approved and filed.

*Assignment of Errors.*

Filed June 28, 1915.

* * * * * * *

1. The court erred in overruling relator's demurrer to the return of defendant and dismissing relator's petition.

2. The court erred in holding that relator was not a person in the classified Civil Service of the United States within the meaning of Section 6 of the Act of Congress approved August 24, 1912.

MADDOX AND GATLEY,
*Attorneys for Relator.*

10 *Designation of Record.*

Filed June 28, 1915.

* * * * * * *

The Clerk will please prepare transcript of record on appeal and include therein the following:

1. Petition of Relator;
2. Memorandum Rule to show cause;
3. Return of Defendant to Rule;
4. Demurrer to Return;
5. Order overruling demurrer and dismissing petition;
6. Memorandum appeal bond filed;
7. Assignment of Errors;
8. This designation.

MADDOX AND GATLEY,
*Attorneys for Relator.*

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 14, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 57986, At Law, wherein United States of America, on the Relation of William F. Arant is Plaintiff and Franklin K. Lane, Secretary of the Interior, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 9th day of July, 1915.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 2853. U. S. of A. ex rel. William F. Arant, appellant, vs. Franklin K. Lane, Secretary of the Interior. Court of Appeals, District of Columbia. Filed Jul- 14, 1915. Henry W. Hodges, clerk.

11 Monday, January 7th, A. D. 1918.

* * * * * * *

No. 2853.

UNITED STATES OF AMERICA on the Relation of William F. Arant, Appellant,

vs.

FRANKLIN K. LANE, Secretary of the Interior.

The argument in the above entitled cause was commenced by Mr. H. Prescott Gatley, attorney for the appellant and was continued by Mr. C. E. Wright, attorney for the appellee.

Tuesday, January 8th, A. D. 1918.

* * * * * * *

No. 2853.

UNITED STATES OF AMERICA on the Relation of William F. Arant, Appellant,

vs.

FRANKLIN K. LANE, Secretary of the Interior.

The argument in the above entitled cause was continued by Mr. C. E. Wright, attorney for the appellee, and was concluded by Mr. H. Prescott Gatley, attorney for the appellant. On motion the appellee is allowed until January 14 to file supplemental brief herein, with leave to appellant to reply if so advised.

12 No. 2853.

UNITED STATES OF AMERICA on the Relation of William F. Arant, Appellant,

v.

FRANKLIN K. LANE, Secretary of the Interior, Appellee.

*Opinion.*

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

Relator Arant was appointed superintendent of Crater Lake National Park June 25, 1903. On June 7, 1913, the Secretary of the Interior of the United States requested relator to resign. To this request relator replied that he was within the classified civil service of the United States, and protested against his removal until charges had been preferred against him in writing and he had been given an opportunity to answer the same. In response to this communication, the Secretary telegraphed him as follows: "Answering letter 17th you are hereby removed from position superintendent Crater Lake Park, effective close June 30. Transfer property new Supt. Steel July 1." Further unimportant communications passed, when, on July 20, 1913, the United States marshal for the District of Oregon, acting under orders from Washington, ejected relator from office and turned the office over to his successor Steel.

About twenty months thereafter, relator filed a petition in the Supreme Court of the District of Columbia praying that a writ of mandamus issue requiring respondent Secretary to vacate his order and to restore him to his office. From an order denying the writ this appeal was taken.

Relator bases his right to reinstatement upon the failure of respondent Secretary of the Interior to comply with the provisions of Section 6 of the Act of Congress of August 24, 1912 (37 Stats. L., 555), which, among other things, provides: "That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal."

The appeal can be disposed of without reference to the status of relator under the Civil Service Act. While it is true that mandamus is a statutory proceeding, and no longer regarded as a prerogative writ, it "is an extraordinary remedial process which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion. * * * Although classed as a legal remedy, its issuance is largely controlled by equitable principles." Duncan Townsite Co. v. Lane, 245 U. S., — (present term). It follows, therefore, that the

court to which the application is made, in the exercise of sound judicial discretion, will not necessarily be governed by the letter of the statute of limitations in granting or refusing the writ. People ex rel. Millard v. Chapin, 104 U. S., 96, 102; State ex rel. Gruber v. Knight, 31 S. C., 81, 84.

In applying for relief, relator offers no excuse for his long delay. He was removed under circumstances which conclusively precluded any reasonable expectation of restoration. True, he avers that "from the time of his unlawful removal from said position as aforesaid, relator has made every reasonable effort to have his rights in the premises accorded him and to be restored to the office of superintendent as aforesaid, but without avail. By and through his attorneys relator has formally requested of said defendant that he re-
13 store him, the said relator, to the office of superintendent, as aforesaid, but said defendant declined and refused and still refuses to comply with such request." Not only is this averment denied in the return, but it fails to show that relator was deterred from applying to the court by any action of respondent, which reasonably could have led him to believe that his request for restoration to the office would be granted.

On the other hand, his successor qualified, and for almost two years performed the duties of the office and drew the salary and allowances appropriated by Congress, while relator sat by inactive, except to protest and transmit his bills for salary to the Secretary. It is reasonable to assume that new conditions arose from time to time in conducting the park, calling for changes of policy in its superintendence, to the extent possibly of requiring that the officer in charge possess different and additional qualifications than formerly had been exacted, all of which suggests the necessity of promptness in challenging the action of the Secretary. The administration of the affairs of the Government are of too vital importance to the public to be interrupted by the application of extraordinary remedies to assuage the protracted grievances of an official who may have been discharged without a technical compliance with the rules of procedure authorizing his dismissal from office. If a discharged official were reinstated under the circumstances of this case, it might result in his immediate discharge by the mere filing of reasons in writing upon which he would not even be entitled to a hearing. Hence, long delayed action could only be accounted for on the theory that it would enable a deposed official to accumulate a large salary account for services which he had not performed. Under such circumstances, every rule of public policy demands promptness in asserting claims for relief.

We think relator's complaint comes too late. The rule as to laches where one seeks restoration to office through the agency of mandamus is well stated in People ex rel. Connolly v. Board of Education, 99 N. Y. Supp., 737, 739, as follows: "I am of the opinion that the motion for a peremptory writ of mandamus should have been denied. A delay of nearly 16 months, in the absence of any explanation, constitutes such laches on the part of the relator that he was not entitled to the relief sought, even though he would have had a legal right to be reinstated had he promptly made his application. In People ex

rel. Young v. Collis, 6 App. Div., 467, 31 N. Y. Supp., 698, it was held, where an honorably discharged veteran claimed to have been improperly removed from his position, that he was guilty of laches, inasmuch as he had allowed more than four months to elapse before applying for a mandamus to compel his reinstatement. In People ex rel. Croft v. Keating, 45 App. Div., 123, 63 N. Y. Supp., 71, it was held that the failure of a veteran to institute a mandamus proceeding until nine months after his removal was fatal, unless satisfactorily explained. The Collis case was cited with approval in People ex rel. Miller v. Sturgis, 82 App. Div., 580, 81 N. Y. Supp., 816, where an order directing the issuance of a peremptory writ of mandamus to restore the relator to a position in the fire department was reversed, upon the ground that the relator was guilty of laches; he having waited for a year and five months before instituting the proceeding, and no excuse being presented for the delay."

The judgment is affirmed with costs.

Affirmed.

14 Monday, February 4th, A. D. 1918.

* * * * * * *

January Term, 1918.

No. 2853.

UNITED STATES OF AMERICA on the Relation of William F. Arant, Appellant,

vs.

FRANKLIN K. LANE, Secretary of the Interior.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per MR. JUSTICE VAN ORSDEL.

February 4, 1918.

15 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between The United States ex rel. William F. Arant and Franklin K. Lane, Secretary of the Interior, a manifest error hath happened, to the great damage of the said William F.

Arant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 24th day of April, in the year of our Lord one thousand nine hundred and eighteen.

[Seal of the Supreme Court of the United States.]

JAMES D. MAHER,
*Clerk of the Supreme Court of the United States.*

Allowed by
EDWARD D. WHITE,
*Chief Justice of the United States.*

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 24, 1918. Henry W. Hodges, Clerk.

16 (*Bond on Writ of Error.*)

Know all Men by these Presents, That we, William F. Arant, as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto Franklin K. Lane, Secretary of the Interior, in the full and just sum of Three Hundred Dollars, to be paid to the said Franklin K. Lane, Secretary of the Interior, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to *to* be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 20th day of April, in the year of our Lord one thousand nine hundred and eighteen.

Whereas, lately at a term of the Court of Appeals of the District of Columbia, in a suit depending in said Court, between United States ex rel. William F. Arant v. Franklin K. Lane, Secretary of the Interior, a judgment was rendered against the said William F. Arant, and the said William F. Arant having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Franklin K. Lane, Secretary of the Interior, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within — days from the date thereof:

Now, the condition of the above obligation is such, That if the

said William F. Arant shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM F. ARANT, [SEAL.]
By H. PRESCOTT GATLEY, [SEAL.]
*Attorney in Fact.*
UNITED STATES FIDELITY AND GUARANTY COMPANY, [SEAL.]
By LOUIS L. PERKINS, [SEAL.]
*Attorney in Fact.*

Sealed and delivered in the presence of
I. M. WHITE.

Approved by
EDWARD D. WHITE,
*Chief Justice of the United States.*

16½ [Endorsed:] 2853. United States of America on the relation of William F. Arant, Appellant, vs. Franklin K. Lane, Secretary of the Interior. Bond on Writ of Error to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Apr. 24, 1918. Henry W. Hodges, Clerk.

17 UNITED STATES OF AMERICA, *ss:*

To Franklin K. Lane, Secretary of the Interior, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein The United States ex rel. William F. Arant is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this twenty-fourth day of April, in the year of our Lord one thousand nine hundred and eighteen.

EDWARD D. WHITE,
*Chief Justice of the United States.*

Service of a copy of the foregoing citation is hereby acknowledged this 25th day of April, 1918.

JNO. W. DAVIS,
*Solicitor General.*

H.

17½ [Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 26, 1918. Henry W. Hodges, Clerk.

18 Court of Appeals of the District of Columbia.

No. 2853.

UNITED STATES OF AMERICA ex Rel. William F. Arant

vs.

FRANKLIN K. LANE, Secretary of the Interior.

The Clerk of the Court will please prepare transcript of record in the above case and include therein the following:

1. Transcript of Record.
2. Argument commenced.
3. Argument concluded.
4. Opinion of the Court.
5. Judgment.
6. Writ of Error.
7. Bond.
8. Citation, with acknowledgment of service.
9. This designation.

SAM'L MADDOX,
H. PRESCOTT GATLEY,
*Attorneys for Arant.*

(Endorsed:) No. 2853. United States of America ex rel. William F. Arant vs. Franklin K. Lane, Secretary of the Interior. Designation of Record. Court of Appeals, District of Columbia. Filed Apr. 29, 1918. Henry W. Hodges, Clerk.

19 Court of Appeals of the District of Columbia.

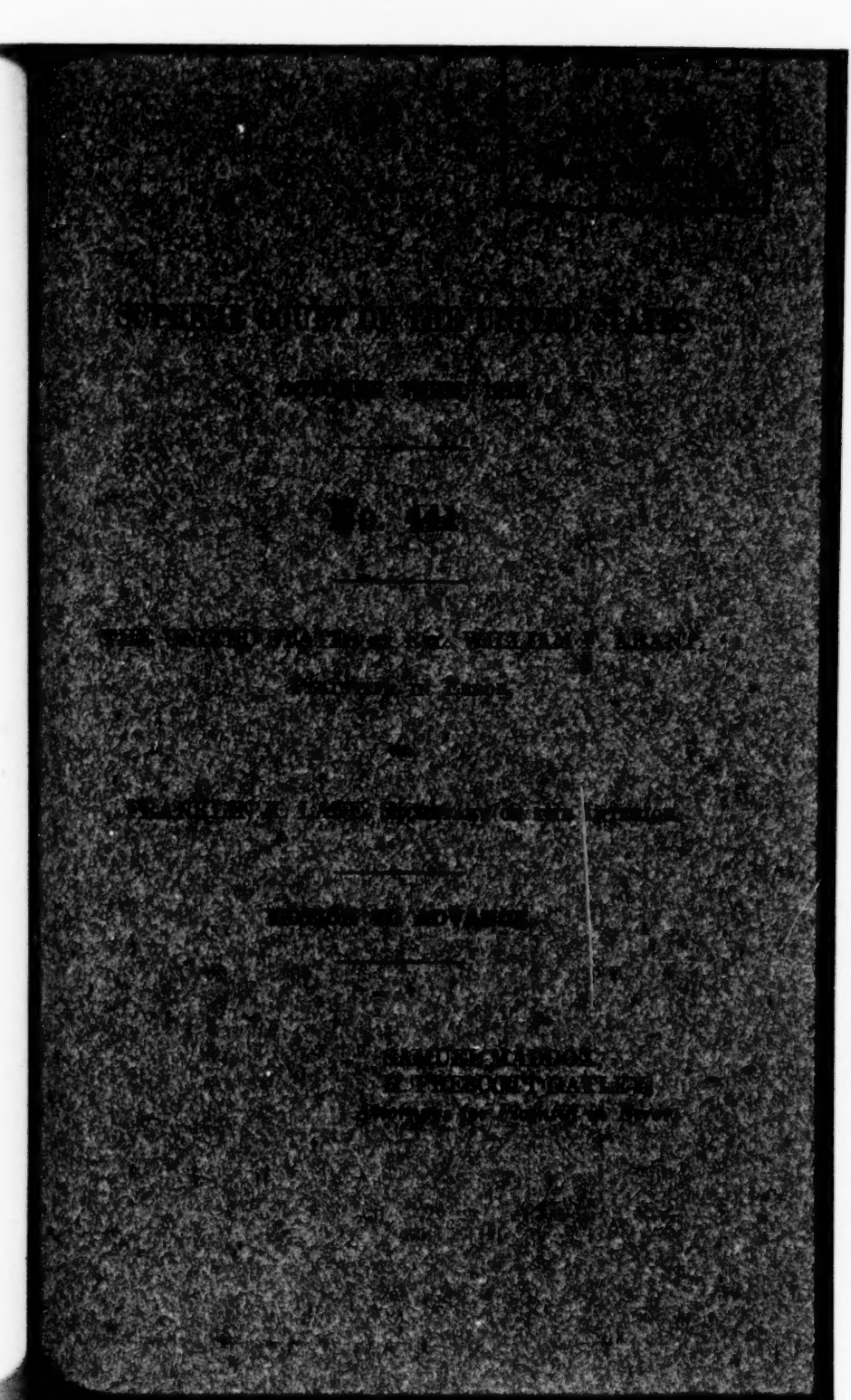
I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 18 inclusive constitute a true copy of the transcript of record and proceedings of said Court of Appeals, as designated by counsel, in the case of United States of America on the relation of William F. Arant, Appellant, vs. Franklin K. Lane, Secretary of the Interior, No. 2853, April Term, 1918, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 30th day of April, A. D. 1918.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

Endorsed on cover: File No. 26495. District of Columbia Court of Appeals. Term No. 1028. The United States ex rel. William F. Arant, Plaintiff in Error, vs. Franklin K. Lane, Secretary of the Interior. Filed May 8th, 1918. File No. 26495.



# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1918.**

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# No. 441.

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THE UNITED STATES ex Rel. WILLIAM F. ARANT,
Plaintiff in Error,

*vs.*

FRANKLIN K. LANE, Secretary of the Interior.

---

Now comes here the plaintiff in error and moves the court to advance the above-entitled cause for hearing, upon the following grounds:

1. The case presents a question of great public importance, involving, as it does, the power of removal of persons in the classified service of the civil service of the United States, under the provisions of section 6 of the act of Congress approved August 24, 1912 (37 Stats. L., 555). The status of all persons in the classified civil service is thus involved.

2. The case has once been fully argued on its merits before this court. (See 245 U. S., 166.)

3. Plaintiff in error, through no fault of his own, has suffered a delay of more than two years in having his case

determined, by reason of the erroneous action of the Court of Appeals of the District of Columbia in voluntarily, on November 3, 1915, certifying the case to this court on questions.

SAMUEL MADDOX,
H. PRESCOTT GATLEY,
*Attorneys for Plaintiff in Error.*

J. H. HARNAHAN,
*Of Counsel.*

*To the Attorney General of the United States.*

SIR: Please take notice that we will submit the foregoing motion to the court on Monday, the 27th day of January, 1919.

SAMUEL MADDOX,
H. PRESCOTT GATLEY,
*Attorneys for Plaintiff in Error.*

21

Office Supreme Court, U. S.
FILED
FEB 18 1919
JAMES D. MAHER,
CLERK.

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1918.**

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## No. 441.

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THE UNITED STATES OF AMERICA *EX REL.*
WILLIAM F. ARANT, RELATOR,

*vs.*

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR,
DEFENDANT.

---

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

---

**BRIEF ON BEHALF OF RELATOR.**

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SAMUEL MADDOX,
H. PRESCOTT GATLEY,
*Attorneys for Plaintiff in Error.*

J. H. CARNAHAN,
*Of Counsel.*

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# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1918.**

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## No. 441.

---

THE UNITED STATES OF AMERICA *EX REL.* WILLIAM F. ARANT, RELATOR,

*vs.*

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, DEFENDANT.

---

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

---

## BRIEF ON BEHALF OF RELATOR.

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### Statement of the Case.

On the 25th day of June, 1903, William F. Arant, relator, was appointed superintendent of Crater Lake National Park, in the State of Oregon. Upon his appointment he entered upon the performance of the duties incident to the position, and continued to perform such duties until the 20th day of July, 1913, when he ceased so to do (R., p. 2).

While engaged in the performance of his duties, on the 7th day of June, 1913, he received from the defendant a request that he forward his resignation as such superintendent (R., p. 3).

In reply to this request relator addressed to the defendant on the 17th day of June, 1913, a letter protesting against his resignation being called for; inviting defendant's attention to the fact that, as such superintendent, he was a person in the classified civil service of the United States under existing laws; invoking the protection of the provisions of law relating to the civil service of the United States, and protesting against his removal from office in the absence of reasons therefor in writing and notice thereof, a copy of charges preferred against him, if any, and a reasonable time within which to answer the same in writing (R., p. 3).

The response to this communication was a telegram from defendant under date June 28, 1913, as follows:

> "Answering letter 17th, you are hereby removed from position superintendent Crater Lake Park, effective close June 30. Transfer property new Supt. Steel July 1.
>
> "LANE, *Secretary.*"

(R., p. 3.)

Subsequently, on July 7, 1913, relator received another telegraphic communication from defendant demanding that he "account and transfer property to Supt. Steel. Failing which matter will be taken up with Department of Justice and your successor put in possession" (R., p. 3).

To this communication relator replied to defendant by telegram, stating that he was ready to make a complete accounting, but refusing to relinquish his position or to make transfer of the property in his possession on the ground that the order of removal was unlawful (R., p. 3).

Thereafter, to wit, on Sunday, the 20th day of July, 1913, the United States Marshal for the State of Oregon ejected relator from his said office and delivered the same into the possession of said Steel (R., p. 1).

Relator, as such superintendent, was a person in the classified civil service of the United States, within the provisions of law and the rules and regulations of the United States Civil Service Commission, promulgated according to law, and could not be lawfully removed therefrom except for such cause as would promote the efficiency of said service and for reasons given in writing; and was entitled to notice of any charges preferred against him and to be furnished with a copy thereof, and allowed a reasonable time for personally answering the same.

That he has formally requested the defendant to restore him to his said position, but that the defendant has refused so to do (R., p. 3).

The foregoing are in substance the facts set forth in the petition filed in this case by relator on April 30, 1915, praying that a writ of mandamus go to the defendant requiring him forthwith to vacate the order of June 28, 1913, and to restore relator to the office of superintendent of Crater Lake National Park, in the State of Oregon.

The defendant made answer to the petition. The answer admits the essential facts set forth in relator's petition, but asserts that he is not entitled to the relief he seeks for two reasons:

First, Because, though as such superintendent relator was a person in the classified civil service of the United States, the position he held was by the Rules and Regulations of the United States Civil Service Commission one that might be filled without competitive examination, and was one from which he might be removed at the will of defendant.

Second, Because relator, having failed, immediately upon his removal from office, to institute litigation, with a view to securing what he believes are his rights in the premises, and having waited for a period of nineteen months before inaugurating these proceedings, is guilty of such *laches* as bars his right to the relief sought by him (R., pp. 6, 7, and 8).

To this answer a demurrer was interposed (R., p. 9).

After a hearing the demurrer was overruled, and, relator electing to stand upon his demurrer, his petition was dismissed (R., p. 9).

From this judgment an appeal was prosecuted to the Court of Appeals of the District of Columbia.

The case was argued and submitted to that court. Thereafter, of its own motion, that court certified the case to this court on the following questions:

First. Was the relator within the classified civil service of the United States under such circumstances that he could not be removed except in the manner prescribed in section 6 of the statute aforesaid?

The statute in question is as follows:

Section 6 of the act of Congress approved August 24, 1912 (37 Stat., 555):

> "SEC. 6. That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing, and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same."

Second. If any right he had, was the same lost by his *laches*, in the prosecution of this suit?

The case was argued in this court and dismissed for want of jurisdiction. (See 245 U. S., 166.)

After a reargument of the case in the Court of Appeals it was held that the relator, because of *laches*, was not entitled to maintain the action, and the judgment of the Supreme Court of the District of Columbia, dismissing his petition, was affirmed.

Thereupon a motion for a writ of error to this court was filed, which motion was denied.

Subsequently a petition for a writ of error was filed in this court and allowed. (See 47 App. D. C., 336, 340, R., p. 12.)

## ARGUMENT.

### I.

*Relator, as Superintendent of Crater Lake National Park, Was a Person in the Classified Civil Service of the United States.*

Under the provisions of section 7 of the civil service act (22 Stats., 403), the only persons excluded from the classified civil service are officers not in the executive branch of the Government, persons employed as laborers or workmen, and persons nominated for confirmation by the Senate.

Rule 2, section 1 of the civil service rules, promulgated by authority of the civil service act, April 15, 1903, provides:

> "The classified service shall include all officers and employees in the executive civil service of the United States, heretofore or hereafter appointed or employed, in positions now existing or hereafter to be created, of whatever function or designation, whether compensated by a fixed salary or otherwise, except persons employed merely as laborers, and persons whose appointments are subject to confirmation by the Senate; but no right of classification shall accrue to persons whose appointment or assignment to classified duties is in violation of the civil service rules."

In an opinion of Attorney General Bonaparte, rendered November 25, 1908, wherein he considers the civil service act and rule 2 and its several sections, he says:

> "It seems quite clear from a consideration of the foregoing provisions of the civil service rule, first, that it is intended to classify the entire civil service, with those exceptions and those only which are imposed by the express language of section 7 of the civil service act" (27 Opinions A. G., 95).

Under the express provisions of the law and the rules and regulations promulgated thereunder there would seem to be no room for argument that the relator was not by virtue of his office or position a person in the classified civil service. Indeed the answer of the defendant herein admits that the relator was a person in the classified civil service.

But it is contended that because the relator occupied a position in what is known as "Schedule A," to which he was appointed without competitive examination and because the office or position held by him was, by the rules and regulations aforesaid, excepted from examination, he was not a "person in the classified civil service" within the meaning of the act of August 24, 1912, hereinbefore referred to.

"Schedule A" is a schedule of classified positions excepted from examination under rule II, section 3. The positions enumerated in this schedule are excepted from competitive examination, and under the rules and regulations (rule 2, section 3) appointments to these excepted positions may be made without examination or upon non-competitive examination or may be filled as competitive positions are filled.

"Excepted positions are in the classified service, being merely excepted from examination in connection with appointment." (Minute of Commission, November 26, 1910.) See 30th Annual Report of Civil Service Commission, p. 67.

In the fourteenth annual report to Congress of the Civil Service Commission, page 260, it is said:

> "The exceptions under the rules have been made upon the theory, as reached by appointing officers,

that *more satisfactory persons* can be obtained without resort to examination and certification, owing to the peculiarities and exacting qualifications demanded in the positions."

* * * * * * *

"Sec. 3 of Rule II provides that no person in the executive civil service shall dismiss, or cause to be dismissed, or make any attempt to procure the dismissal of, or in any manner change the financial rank or compensation of any other person therein because of his political or religious opinions or affiliations. All excepted positions are within the classified service, and, under section 2 of the civil service act and Rule II, no removal may be made from such positions for political reasons. While under section 2 of the civil service act positions within the civil service may be excepted from the requirement of examination, they are not excepted from the separate prohibition of removal for political reasons. The President, in the civil service rules, has recognized this construction of the act and carried out its provisions by forbidding changes in the classified service, including the excepted places, for political reasons. (Minutes, June 10, 1896, and letter to the Postmaster General, April 1, 1896, file 478.)"

In the seventeenth report of the Civil Service Commission for the year ending June 30, 1900, it is said, page 23:

"There appears to be a general misapprehension as to the status of excepted positions under the civil service law and rule. Excepted positions remain in the classified service, but are excepted from the requirements of competitive examination for appointment. They are, however, subject to the other provisions of the law and rules. For example, they are subject to the provisions forbidding dismissal, or changes of official rank or compensation for political or religious reasons, and also to the provisions as to political assessments."

In 27th Opinions Attorney General, page 96, after considering the civil service act, the rules and regulations and "Schedule A," Attorney General Bonaparte says that "employment in the classified service is to be secured through competitive examination and not otherwise, in all cases not expressly excepted from the operation of the general rule; and that it is in no case to be considered that a position is excepted unless the language relied upon to establish the exception is so plain and unequivocal as to admit of no doubt."

It will thus be seen that although the relator occupied a position in "Schedule A" which was excepted from examination for appointment, nevertheless he was a person within the classified civil service.

It is contended, however, by the defendant that appointment to the position which relator held was the subject of purely personal appointment, the tenure being at the pleasure of the appointing power. This contention is hardly tenable when due consideration is given to the express provisions of the civil service act, the rules and regulations promulgated thereunder, and the purposes and objects underlying the enactment by Congress of the civil service law.

As appears by the title to the civil service act of 1883, it was passed with a view to regulating and improving the civil service of the United States.

In the report of the committee submitting the civil service bill to the House and explaining its scope (see Senate report 576, first session, 47th Congress) it was said:

> "But the subordinates in the executive departments, whose duty is the same under every administration, should be selected with sole reference to their character and their capacity for doing the public work. This latter class includes nearly all the vast number of appointed officials who carry into effect the orders of the Executive or heads of departments, whether in Washington or elsewhere."

Section 2 of the act provides that it shall be the duty of the Civil Service Commissioners, first, to aid the President, as he may request, in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate, to aid in all proper ways in carrying said rules and any modifications thereof into effect.

So we respectfully submit that with the civil service law on the statute books the head of any of the executive departments in making an appointment to a position excepted from examination does not act in a personal way and cannot act under the law in a purely arbitrary manner. To the contrary, we submit, he is charged with the duty of appointing a person to such position who possesses the qualifications necessary for the proper discharge of the duties of the position to which he is to be appointed and to make an appointment which will tend to improve the civil service of the Government.

As was said in Keim *vs.* U. S., 177 U. S., 290-293:

> "The appointment to an official position in the Government, even if it be simply a clerical position, is not a mere ministerial act, but one involving the exercise of judgment. The appointing power must determine the fitness of the applicant; whether or not he is the proper one to discharge the duties of the position."

Having shown, as we respectfully submit it has been shown, that relator, although holding a position excepted from competitive examination, was nevertheless a person in the classified civil service, we are confronted with the question: COULD HE BE LAWFULLY REMOVED FROM SUCH POSITION EXCEPT IN THE MANNER PRESCRIBED IN SECTION 6 OF THE STATUTE AFORESAID?

We do not dispute the general proposition that the power of appointment carries with it the power of removal. The power of removal may, however, be restricted by Congress.

In Keim *vs.* United States, 177 U. S., 292, 293, this court said:

> "*In the absence of specific provision to the contrary*, the power of removal from office is incident to the power of appointment." (Italics ours.)

And again at page 294:

> "*Unless, therefore, there be some specific provision to the contrary*, the action of the Secretary of the Interior in removing the petitioner from office on account of inefficiency is beyond review in the courts either by mandamus to reinstate him or by compelling payment of salary as though he had not been removed." (Italics ours.)

The Court of Appeals of the District of Columbia in U. S. *ex rel.* Taylor *vs.* Taft, 24 App. D. C., 95, 98, recognizes the right of Congress to control the power of removal. At page 98 of the report it is said:

> "This power of removal, therefore, would seem to be unrestricted, *except as controlled by legislation by Congress.*" (Italics ours.)

The question therefore presented is: HAS THIS POWER OF REMOVAL BEEN LIMITED AND RESTRICTED BY THE ACT OF CONGRESS APPROVED AUGUST 24, 1912? The language of the act applicable to this case is as follows:

> "SEC. 6. That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally

> answering the same in writing, and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same."

In the face of the express provisions of this act of Congress, the language of which could hardly be made more explicit or broader or more comprehensive, and in the face of the holding and advice of the Civil Service Commission (see 30 Op. Att'y Gen., 181, pages 19 and 20 of this brief), the defendant in this case, without complying with any of the provisions of the law, undertook to and did remove the relator from the position which he held. There is no allegation in his answer that his removal of the relator from office was "for such cause as will promote the efficiency of said service," and in the absence of such a showing on the part of defendant we submit the presumption is that no such cause existed, but that the act of defendant in so removing the relator was predicated of a desire on his part to appoint some one else, for reasons of his own, to the position occupied by the relator. And it is now set up as a justification for this act of the defendant that the provisions of the act in question are not applicable to relator because, though a person in the classified civil service, he occupied a position which was excepted from competitive examination. In other words, it is contended that although the Congress by this act says that *no person in the classified civil service* shall be removed except only in conformity with its provisions, it did not mean what it said but meant that no person in the classified civil service appointed after competitive examination should be removed, without first complying with the

provisions of the act. But there is no exception or restriction in the act itself and we submit the court is without power to interpolate into the act phrases, restrictions, or limitations not placed there by the enacting power.

> "Courts may not surmise or speculate as to legislative enactments. With the reasons for conferring or withholding a power the courts have no concern. They must interpret the statute as they find it. * * * It is always competent for the legislature to speak clearly and without equivocation, and it is safer for the judicial department to follow the plain intent and obvious meaning of the act, rather than to speculate upon what might have been the views of the legislature in the emergency which may have arisen. It is wiser and safer to leave to the legislative department to supply a supposed or actual *casus omissus* than attempt to do it by judicial construction."
>
> Speed, Relator, *ex.* Common Council of the City of Detroit, Mich., 22 L. R. A., 842, 845.

Where the legislature makes a plain provision, without making any exception, the courts can make none.

Yturbide *ex.* U. S., 22 How., 290.

See also 89 Fed. Rep., 40; 9 Wyo., 276.

Maxwell *ex.* Moore, 22 How., 185.

Where a provision is left out of a statute either by design or mistake of the legislature the courts have no power to supply it. To do so would be to legislate and not to construe.

Hobbs *ex.* McLean, 117 U. S., 567.

No mere omission, or failure to provide for contingencies which it may seem wise to have specially provided for, justifies any judicial addition to the language of the statute.

Pirie *ex.* Chicago Title & T. Co., 182 U. S., 438.

There is no ambiguity in the language employed by the legislature; there is no doubt as to the meaning of the words which it has used, and it is the duty of the court to construe the act so as to give full force and effect to the language employed in it.

It is the duty of courts of justice so to construe all statutes as to give full effect to all the words in their ordinary sense.

Bend *vs.* Hoyt, 13 Pet., 293.

It is the duty of the court to give effect to every word in a statute which is sensible in the place where it occurs, provided that can be done without violating the obvious intention of the legislature.

U. S. *vs.* Gooding, 12 Wheat., 150.

The rule is that a statute ought to be so construed that, if possible, no clause, sentence, or word shall be superfluous, void, or insignificant.

Montclair *vs.* Ramsdell, 107 U. S., 147.

Market Co. *vs.* Hoffman, 101 U. S., 112.

Congress was not legislating upon a new subject. The Civil Service of the Government has been the subject of legislation by Congress for many, many years. The term "classified civil service" has found its way into many statutes. Why, then, should it be said that in using this term in the act of August 24, 1912, Congress did not use it in its ordinary and usual sense, and in the same sense that it was used in the act of 1883 and in the rules and regulations promulgated under that act? Why, in the absence of any restriction or limitation in the act, should it be said that Congress used the expression in a restricted or limited sense? If Congress intended that the provisions of this act should not apply to positions excepted from competitive examination or to appointments made to the classified civil service without competitive examination, it was a very simple matter to have used appropriate language in the statute to make that

intention manifest. In the absence of such language how can it be said that Congress intended something not comprehended by the language which it used? Why should not a person in the classified civil service, appointed without competitive examination, be entitled to the protection of the provisions of this act just as much as a person in the classified service appointed after examination should be entitled to it? Why should not a person occupying a position in the classified service, appointed without examination, and who has for many years faithfully performed the duties of that position be as much entitled to receive a copy of the charges, if any, made against him as a basis for his removal as one who held such position after competitive examination, but who had not faithfully performed his duties?

The whole basis of the defendant's contention in this case is simply because the relator occupied a position excepted from examination he is not entitled to the benefit of the provisions of the act of August 24, 1912. If mere absence of examination for appointment disentitles a person in the classified civil service to the protection of the provisions of the act of August 24, 1912, what becomes of all persons transferred to the classified civil service, without examination, by specific acts of Congress? Would such persons be entitled to the protection of the provisions of this act?

Attorney General Knox, in construing section 3 of the act of April 28, 1902 (32 Stats., 120-171), providing for the transfer to the classified service of the Government of certain temporary positions which were created to meet the exigencies of the war with Spain, and exempted from examination such employees as filled these positions at the time of the passing of the act, held: That the act related to both the persons and positions which they then filled and that "in bringing the places in question within the operation of the civil service laws, it sought to place their incumbents in the same position as though they had passed their examinations, and complied in other respects with the

laws and regulations affecting the civil service" (24 Opinions Attorney General, 81).

By the 5th paragraph of section 2 of the act of 1883 it is provided that the Civil Service Commission "shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations, and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act."

When the act of 1912 was passed, for practically thirty years Congress had been receiving annual reports from the Civil Service Commission. It had full and complete knowledge of all of the rules and regulations of the Commission. It knew of the existence of "Schedule A" and that the positions enumerated in that schedule were excepted from examination. It cannot, therefore, be contended, with any degree of force, that the Congress in passing the act of 1912 acted in ignorance of the fact that persons occupying positions in "Schedule A," excepted from examination, were, under the act of 1883 and the rules and regulations promulgated thereunder, in the classified civil service of the United States. It knew that the Civil Service Commission held persons occupying positions listed in "Schedule A" to be persons in the classified civil service. It knew that the title to "Schedule A" was "classified positions excepted from examination under rule 2, section 3."

The act of August 24, 1912, was therefore, we submit, enacted by Congress with full and complete knowledge on its part of the situation as it existed at that time. The act itself was in furtherance of the purposes and objects of all existing law with respect to the civil service of the Government, viz: To promote its efficiency. To this end it was deemed wise by the legislators that restrictions and limitations should be placed on the power of removal of persons occupying positions in the classified civil service, whether appointed after competitive examination or not, and it therefore enacted that no person should be removed therefrom

except for such cause as would promote the efficiency of the service. And in a spirit of fairness and justness it further provided that no such removal could be had without charges in writing, of which the person sought to be removed should have notice and a copy furnished him and the right of personally answering the same. In reason these provisions should apply equally as well to persons appointed after examination as to those appointed without examination. In either case the appointment is in contemplation of law, made after a determination of the fitness and competency of the person to fill the position to which he is appointed. The method of such determination may be different, but the effect is the same.

The act of 1912 is in absolute accord with all prior legislation with regard to the civil service of the Government and its objects and purposes. It tends for the betterment of the service by preventing the removal of persons in it except for "such cause as will promote the efficiency of the service," and does away with removals for merely partisan or personal considerations.

We are not here concerned with the wisdom or advisability of this legislation. Men may differ in their opinions as to these. If the Congress deemed it best to further curtail and restrict the power of removal of persons in the classified civil service and prevent their removal for merely partisan or personal reasons, and thus further safeguard against the operation of the "spoils system," it had undoubtedly the right to do so. Whatever the policy underlying the legislation, the provisions of the statute are not to be disregarded.

> "* * * Where a statute, as in this case, is clear and free from all ambiguity, we think the letter of it is not to be disregarded in favor of a mere presumption as to what is termed the policy of the Government. * * *"
>
> St. Paul, &c., Ry. Co. *vs.* Phelps, 137 U. S., 528, 536.

In Bate Refrigerating Company *vs.* Sulzberger, 157 U. S., 36, 37, it is said:

> "In our judgment the language is so plain and unambiguous that a refusal to recognize its natural, obvious meaning would be justly regarded as indicating a purpose to change the law by judicial action based upon some supposed policy of Congress. But, as declared in Hadden *vs.* Collector, 72 U. S., 107, 'What is termed the policy of the Government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes.'"

But we submit that all doubt about the matter is set at rest by a consideration of the Rules and Regulations of the Civil Service Commission as they existed at the time of the passage of the act of 1912.

Section 1 of Rule XII as it then existed provided:

> "A removal or reduction may be made for any cause which will promote the efficiency of the service, but like penalties shall be imposed for like offenses, and no discrimination shall be exercised for political or religious reasons."

Section 2 of that rule provided:

> "A person in the competitive service whose removal is proposed shall be furnished with a statement of reasons and be allowed a reasonable time for personally answering such reasons in writing; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal. Copy of such reasons, and answer, and of the order of removal shall be made a part of the records of the proper department or office, and the Commission shall upon its request be furnished with a copy of the record in the case. The above procedure shall be followed in like manner in any reduction in grade or compensation for de-

> linquency or misconduct, but the procedure may be limited to the filing of a statement of reasons with the order of reduction if the reduction is for administrative reasons only."
>
> See 28th Annual Rep. to Congress, pp. 88, 89.

It will be observed then that under the rules existing at the time of the passage of the act of 1912 any person in the classified service could be lawfully removed for any cause which would promote the efficiency of the service. But no person in the *competitive* classified service could be removed without being furnished with a copy of the reasons and after having been given an opportunity for personally answering the same.

It may be contended, and for the purpose of this argument we may safely admit, that the Civil Service Commission could not by its *rules* limit the power of removal, but that the Congress alone can limit and restrict this power.

We submit that in passing the act of 1912 the Congress had before it the language of these rules. By the passage of the act it embodied in the *law* the substance of the *rules*. In so doing it had the right to limit the power of removal of all persons in the classified civil service, whether appointed after competitive examination or not. What significance is to attach to its omission from the act of the word "competitive" contained in the rule? Is it to be presumed that by its omission it intended that it should remain in or be read into the act in its construction?

Is it to be inferred that in omitting the word "competitive" and using the broad and comprehensive expression "classified civil service of the United States" the Congress intended that its plain and unambiguous language should be construed in a restricted sense? Rather is it not to be presumed that the Congress designedly omitted the word "competitive" for the very purpose of making the law applicable to *every person* in the classified service, whether appointed after examination or not? We submit that the words "no person" in conjunction with the words "in the classified civil service

of the United States" leave no doubt whatever as to the meaning of the law. The provision of the law that *no person* in the classified civil service shall be removed except as therein provided cannot by any well-defined process of reasoning be construed to mean that *some persons* may otherwise be removed.

The construction of the statute contended for by relator is not unreasonable and leads to no absurd result. It is in absolute harmony with both the letter and spirit of the act, the purpose of which, as indicated by its provisions, was the promotion of the efficiency of the civil service.

The provisions of the act of 1912 are likewise in full accord with all prior legislation on the subject, and in furtherance of the purposes and objects thereof, from the time of the enactment of the civil service act of 1883. All legislation on the subject has been with a view to the betterment of the service.

As is said by Sater, district judge, in U. S. *ex rel.* Palmer *vs.* Lapp, U. S. Marshal, decided April 25, 1916 (District Court, Northern District of Ohio, Eastern Division; not reported):

> The purpose of the act of 1912 was to change the existing law by restricting the discretionary power of superior officers in the matter of removals. It was designed to give greater security to those occupying subordinate positions and thereby to improve the public service by requiring that removals shall be for cause and after a hearing."

For these reasons we find nothing that militates against the contentions of relator herein in the case of the Church of the Holy Trinity *vs.* United States, 143 U. S., 457, relied upon by the defendant at the hearing below, which decision in turn forms the basis of the opinion of the Attorney General (30 Op. Att'y Gen., 181), that the defendant, presumably, was following when he removed the relator from office.

In that opinion the Attorney General states that appointments to positions enumerated in Schedule A, without com-

petitive examination, are purely personal appointments, with an arbitrary right of selection, carrying with them the right of arbitrary removal.

This opinion of the Attorney General, rendered for the Secretary of Commerce, places a construction upon the law absolutely contrary to the construction placed upon it by the Civil Service Commission. He says:

> "It appears that the Civil Service Commission has advised you in this matter as follows:
>
> "'The classified civil service comprises all those positions which on the one hand are not subject to confirmation by the Senate and on the other hand are not those of mere laborers or workmen. Positions excepted from examination under Schedule A of the rules are therefore within the classified service and section 6 of the act of August 24, 1912, as it applies in direct terms to all classified employees, applies to persons occupying positions excepted from examination under Schedule A.'"

Not only is this opinion of the Attorney General in conflict with the uniform holdings of the Civil Service Commission, but, we submit, it is not sound in the light of the decision of this court in Keim *vs.* United States, *supra*, and the duties and obligations resting upon the appointing power under the express provisions of the civil service act and the rules and regulations promulgated under its authority, to which reference has hereinbefore been made.

The construction placed upon this statute by the Civil Service Commission, charged with the duty of enforcing it, ought not to be overruled without cogent reasons (see United States *vs.* Moore, 95 U. S., 760; Hahn *vs.* United States, 107 U. S., 402; United States *vs.* Johnston, 124 U. S., 573; Provident Life & T. Co. *vs.* Mercer County, 170 U. S., 503; Five Per Cent Cases, 110 U. S., 471; Pennoyer *vs.* McConnaughy, 140 U. S., 1), especially when that construction is in harmony with the uniform holding of the Commission that persons holding positions in Schedule A

are in the classified service and entitled to all protection afforded by the law and regulations relating to removals.

The Attorney General further expresses it as his view that the words "classified civil service" as they appear in the act of 1912 were used in the popular sense of competitive service. We can find no warrant for the conclusion that the words were used in any different sense than in the civil service act of 1883 or subsequent acts. By section 7 of the civil service act and by rule 2, section 1, of the civil service rules, promulgated in 1903 under authority of that act by the President and the Civil Service Commission, the classified civil service includes all officers and employees in the executive civil service of the United States, except persons employed merely as laborers and persons whose appointments are subject to confirmation by the Senate.

If we may look at the history of the act of 1912 (Congressional Record, vol. 48, part 2, p. 10,804), it will appear beyond question that the object of the provisions of section 6 of that act with which we are concerned was to prohibit the removal of any person holding a position under the civil service laws except for such cause as will promote the efficiency of the service, and then only upon charges in writing, of which the person to be removed should have notice, be furnished with a copy, and be given a reasonable opportunity of answering the same.

We quote from the brief filed in behalf of the defendant in the trial court. After reciting the provisions of section 6 it says:

> "This is an excerpt from the Post-office appropriation bill, which originated in the House. In the House bill its operations were confined to the 'classified civil service' '*in the postal service*.' On August 13, 1912, on motion of Senator Jones, the expression 'in the postal service' was stricken from the bill. On the preceding day Senator Jones had called the attention of the Senate to a bill which he had introduced about April 10, 1911, which provided:

> "'And no person holding a position under the *civil service laws* shall be removed therefrom except for such cause as will promote the efficiency of the service,' etc.,
>
> a bill in which provision was made for written charges and notice, etc. Quite obviously, Senator Jones saw in section 6 of the Post-office bill the same purpose that he had in 1911, but did not think that its operation should be confined to one department exclusively. By the elimination of the phrase 'in the postal service' he could effect his earlier intention." * * *

These statements from the brief of defendant below are but a reiteration of the purpose in amending the bill as stated by Senator Jones at the time the amendment was suggested and adopted, viz.: "So as to make the provision apply to all members of the classified service as well as of the postal service."

## DEFENDANT'S ARGUMENT.

The contention of the defendant has been, and doubtless will continue to be, that the words "classified civil service," used in the act of August 24, 1912, were intended to mean, and actually mean, "the competitive branch of the classified civil service."

In support of this contention several arguments have been advanced. We shall assume they will again be put forth, and deal with them briefly.

### A.

For the purpose of the argument the classified civil service is somewhat curiously divided into three branches: First, Those persons *excluded* from the classified service by the original civil service act, viz: laborers and workmen and persons nominated for confirmation by the Senate. Second, Those persons appointed after examination, competitive or

non-competitive. Third. Those persons appointed to positions in Schedule A without examination.

The position is then taken that the words "classified civil service" as used in the act of 1912 refer only to one of these branches, viz: that branch composed of positions to which appointments are made after competitive examination.

It cannot be doubted that the Congress had ample authority to limit and restrict the power of removal. And in the exercise of that authority it undoubtedly had the right, if it saw fit, to deal with one branch only of the classified civil service.

The simple answer to the contention of defendants' counsel is that although the Congress possessed this right it did not exercise it by limiting and restricting the power of removal to either of the branches of the classified civil service, but made it applicable to the *whole*. The language used is "no person in *the* classified civil service." Had the Congress intended the provisions of the act to apply solely to the competitive branch of the service it could have so stated with as great facility as counsel for the defendant state it.

Its will as expressed in its enactments, no matter how arbitrary it may appear to those affected by it, is the law.

In the enforcement of that law there is no room for the exercise of arbitrary power, either on the part of the heads of executive departments or the courts.

As said by this court in Wilson *vs.* New, 243 U. S., 333: "After the paramount duty to enforce the Constitution, the very highest of judicial duties is to give effect to the legislative will, with judgment uninfluenced by those considerations which apply to the legislature alone."

B.

Reference has been made to and excerpts taken from some of the annual reports of the Civil Service Commission to Congress. Certain deductions and inferences have been

drawn from these, to which they ask the court to add certain other inferences and deductions, and from the whole find that the construction they seek to have placed upon the act in question is the correct one.

In this brief, filed in behalf of the relator, reference is made to certain of these reports and excerpts quoted therefrom, the language of which is so plain that it can admit of no doubt whatever, showing that the position occupied by the relator was in the classified civil service and protected by the law and rules and regulations regarding removal.

Though these reports were made to Congress pursuant to its mandate, in the oral argument of this case, and indeed in the first brief filed in behalf of the defendant, the court was practically asked to ignore these reports and their contents upon the ground that the Congress was utterly ignorant of them.

C.

Reliance is placed by counsel for the defendant upon the language of certain acts of Congress passed *subsequent* to the act in question, as supporting their contention.

These acts are in no sense declaratory of the act of 1912, and, therefore, we submit, as matter of law, recourse cannot be had to them for the purpose of construction. Reflected light from them cannot make clearer the language of the act of 1912, which is now as clear as the noonday sun.

D.

It is argued by counsel that the purpose of the enactment of section 6 of the act of 1912 was to overcome the effect of the so-called "gag rule" brought into existence by certain executive orders promulgated in 1902, and subsequently,

whereby all officers and employees of the Federal Government were prohibited from soliciting increase in pay or influencing legislation except through the heads of the respective departments, on penalty of dismissal from the service.

Reference to the debates in Congress is had in support of this contention. We do not understand that resort to such debates may be had for the purposes of construction.

Debates in Congress are not appropriate sources of information from which to discover the meaning of a statute passed by that body.

Dunlop *vs.* United States, 173 U. S., 65.

District of Columbia *vs.* Washington Market Co., 108 U. S., 243.

U. S. *vs.* Trans-Missouri Freight Asso., 166 U. S., 290.

Maxwell *vs.* Dow, 176 U. S., 581.

A reading of these debates, however, shows conclusively that these executive orders had greatly aroused the ire of members of both the House and Senate.

In the light of this, it is not at all surprising that the Congress exercised the right which it undoubtedly possessed, to restrict the power of removal by the heads of the various executive departments.

As originally framed the act by its terms applied to the classified civil service in the postal service. Senator Jones offered an amendment striking out the words "in the postal service," which amendment was adopted, without debate. No debate was necessary, for his purpose was, as stated at the time, to make the provisions applicable to *all* persons in the classified civil service. And in conclusion, we submit, this purpose of Senator Jones was accomplished, for the language of the act is "the classified civil service," meaning thereby the *whole*, and not merely one of its constituent branches.

**Relator is Not Barred from Relief by Laches.**

It is contended by the defendant that because relator waited from July 20, 1913, the date of his removal from office, until April 30, 1915, to institute this proceeding, he was guilty of such *laches* as that any right to relief he may have in the premises is lost to him.

It will be observed (R., p. 5) that in the tenth paragraph of relator's petition it is averred that from the time of his unlawful removal from office he made every reasonable effort to have his rights in the premises accorded him and to be restored to his position, but without avail; and that by and through his attorneys he formally requested of the defendant that he be restored to his position, which request defendant refused and still refuses to grant.

Although the Court of Appeals in its opinion states that these averments of the petition are denied in the defendant's answer, an examination of the answer (R., p. 8), we submit, discloses that the denial is a limited one, *i. e.*, a denial to the extent only that defendant says relator might have instituted proceedings immediately after his removal, to have his rights judicially determined.

Does it lie in the mouth of the defendant to say that, having violated the law and perpetrated a wrong upon the relator, and having persisted in so doing, the relator is precluded from obtaining any relief at the hands of the court because, before seeking such relief and burdening the courts and the Government with litigation, he undertook, by all reasonable efforts, to have righted the wrong inflicted by the defendant?

Is relator to be condemned because, forsooth, instead of inaugurating litigation he undertook by amicable means to have his rights accorded him? Our understanding of the policy of the law is rather that he is to be commended for so doing.

The defense of *laches* interposed by the defendant is based upon two grounds:

First. The lapse of time between the date of relator's removal and the institution of this proceeding.

Second. That relator's successor, Steele, has been occupying the office from which relator was removed and drawing the salary incident thereto.

Neither of these grounds, it is respectfully submitted, constitutes a sufficient foundation upon which to rest the defense.

*Laches* is not an imaginary thing conjured up in the minds of courts to deprive a suitor of his remedy. It is a creature of equity and is founded upon principles of equity. There is no showing made here to call for the application of the doctrine; no claim that because of the lapse of time evidence has been lost; no change in the situation of the parties; no rights of innocent third parties intervened; no prejudice to the rights of the defendant. There is no issue of fact to be determined in the case. It involves a question of law, pure and simple.

> "*Laches* is not like limitation, a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties."
>
> Galliher *vs.* Cadwell, 145 U. S., 368, 373.

The situation in this case is one created solely by the wrongful act of the defendant. It is the same today as it was the day he created it. There has been no change, and, we respectfully submit, that in such circumstances, one who has perpetrated a grievous wrong and been guilty of a gross violation of public duty and trust ought not to be heard to invoke such a defense against his innocent victim.

We come now to the second ground upon which defendant bases his defense of *laches*. This ground, as before stated, is that another person has occupied the office from which relator was removed, from the time of his removal, and has

received the salary therefor. How does this affect the situation? We cannot see that the defendant has been prejudiced thereby. If we correctly read the decision of this court in United States *vs.* Wickersham, 201 U. S., 390, and relator was unlawfully removed from his office, he is of right entitled to receive the compensation of that office from the time of his removal until such time as he is reinstated therein. In that case it appeared that Wickersham was a clerk in the classified civil service. It further appeared that he was unlawfully suspended by his superior officer. Later along he was reinstated. Subsequently he brought suit in the Court of Claims to recover the amount of his salary from the date of his unlawful suspension to the date of his reinstatement. He recovered a judgment accordingly.

In affirming that judgment this court said (p. 399):

> "The appellee * * * was entitled to the privileges and emoluments of his position until he was legally disqualified by his own action or that of some duly authorized public authority. The attempted suspension without authority of law, he remaining ready and willing to discharge the duties of the place (see paragraph 9 of relator's petition, R., p. 4), could not, during the period of such wrongful suspension, have the effect to deprive him of the compensation legally belonging to one entitled to hold the position."

If, therefore, relator was unlawfully removed from his position it would seem to be to the best interests of the Government that he be reinstated at the earliest possible moment. This being so, it is difficult to understand in what manner the defendant is prejudiced by the filing of this proceeding, having for its object such reinstatement, even though its filing was delayed until after the defendant was afforded every reasonable opportunity to right the wrong he had done relator.

In this jurisdiction the right to mandamus is governed by the provisions of Chapter XLII of the Code, sections

1273 to 1282, inclusive. Under these provisions, if the facts and law of a case authorize the granting of a mandamus, the petitioner is entitled to the writ as of right. In no sense does his right depend upon the exercise of discretion on the part of the court.

Section 1278 provides for the trial of issues of fact, either by a jury or by the court. If the verdict be for the petitioner, or if upon hearing the court determines for the petitioner, or judgment be given the petitioner upon demurrer or want of a plea, the provision of the section is that "*a peremptory writ of mandamus shall be granted thereupon without delay against the defendant.*"

Section 1280 provides that if the defendant shall neglect to file his answer to the petition * * * the court shall proceed to hear the said petition *ex parte* within five days thereafter, and if it shall be of opinion that the facts and law of the case authorize the granting of a mandamus as prayed "*it shall thereupon without delay order a peremptory mandamus to issue.*"

Mandamus is a common-law remedy.

> Heine *vs.* Levee Commissioners, 19 Wall., 655.

> "It is equally well settled that a mandamus in modern practice is nothing more than an action at law between the parties, and it is not now regarded as a prerogative writ. * * * But the right to the writ, and the power to issue it, has ceased to depend upon any prerogative power, and it is now regarded as an ordinary process in cases to which it is applicable."
>
> Kentucky *vs.* Dennison, 24 How., 66.

See also:

> Decatur *vs.* Paulding, 14 Pet., 524.
> Kendall *vs.* U. S., 12 Pet., 524.

By section 1265 of the Code of Law of the District of Columbia, relator had three years after his removal within which to institute this proceeding. No lapse of time short

of this period of three years can operate as a bar to relator's right to institute this action:

> "Though a good defense in equity, *laches* is no defense at law. If the plaintiff at law has brought his action, within the period fixed by the statute of limitations, no court can deprive him of his right to proceed."
>
> Wehrman *vs.* Conklin, 155 U. S., 314, 326; cited with approval in Abraham *vs.* Ordway, 158 U. S., 416, 422.

See also:

Roller *vs.* Clark, 38 App. D. C., 260, 266.

In Barbour *vs.* Moore, 10 App. D. C., 30, 47, it is held that in an action at law "lapse of time, short of the period of limitations, is of no avail as a defense."

In conclusion, we respectfully submit:

1. Relator, as superintendent of the Crater Lake National Park, in Oregon, was a person in the classified civil service of the United States.

2. As such he was entitled to the protection of all law and rules and regulations regarding removals therefrom.

3. He was unlawfully removed from his position.

4. He has adopted the proper remedy to secure his reinstatement and is entitled to pursue that remedy.

5. The judgment of the Court of Appeals of the District of Columbia affirming the judgment of the Supreme Court of the District of Columbia, dismissing relator's petition, is erroneous, and should be reversed and the cause remanded with instructions to enter judgment in his favor and thereon to issue a peremptory writ of mandamus against the defendant, directing said defendant to vacate the order of June 28, 1913, removing relator from said office and to reinstate relator therein.

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| Act of September 26, 1914 (38 Stat. 717, 718) | 11 |
| Act of July 17, 1916 (39 Stat. 360, 361) | 12 |

# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES EX REL. WILLIAM F. ARANT, plaintiff in error,
*v.*
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR.

No. 441.

*IN ERROR TO THE CIRCUIT COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.*

## BRIEF ON BEHALF OF THE DEFENDANT.

### STATEMENT OF THE CASE.

Relator, Arant, filed in the Supreme Court for the District of Columbia a petition for a writ of mandamus directing the Secretary of the Interior to restore him to the position of Superintendent of Crater Lake National Park from which, it was asserted, he had been wrongfully removed. Relator's demurrer to defendant's return was overruled and the petition dismissed (R. 9). The Court of Appeals affirmed this judgment (R. 14). Review of the action of the Court of Appeals now is sought.

THE FACTS.

The facts which are collated from the petition (R. 2–5) and the return (R. 6–8) are as follows:

Relator was appointed June 25, 1903, to be superintendent of Crater Lake National Park. His appointment was by direct action of the Secretary of the Interior without any examination or certificate by the Civil Service Commission. In 1908 the place was included in what is called the "excepted" class of the public civil service as appears by a certain "Schedule A" appended to the regulations of the commission (26th Rep. U. S. Civ. Service Commn.) and has remained so "excepted" from the regulations requiring appointments to be made after competitive examination and certification by the commission.

On June 7, 1913, defendant requested relator to resign. He refused, asserting that he could not be removed without notification of the charges against him and the furnishing of reasons in writing. On June 28, 1913, defendant informed relator that he was removed from office, the removal becoming effective June 30. Relator refused to relinquish possession and turn his offices over to his successor. On July 20, 1913, his physical removal was accomplished by the United States marshal. His successor entered, qualified, and has since performed the duties and received the compensation of the office.

It is alleged (R. 5) that relator has made every reasonable effort to be restored to his office and has requested such restoration, but nothing in the record

shows what he did. The defendant denied his general averment in this regard and set up the defense of laches, in that relator did not seek recourse to the courts until nearly two years had passed since his removal.[1] The petition was filed on April 30, 1915, exactly twenty-two months after the removal.

THE STATUTE.

Appellant contends that his claim is supported by section 6 of the act of August 24, 1912 (37 Stat., 539, 555), which is quoted *infra*.

THE ISSUES.

Appellant concedes (Bf., 9, 10) that the power of appointment was in the Secretary of the Interior and that the power of removal was in him. He tenders (Bf., 10) as the issue, the question:

> Has this power of removal been limited and restricted by the act of Congress, approved August 24, 1912?

While under some circumstances this might state the issue of the case, there is a preliminary question the answer to which makes further examination of the matter unnecessary for the disposition of this appeal. That question is:

> Was relator guilty of laches so gross as to constitute a final bar to his success?

[1] The Court of Appeals said of this (R. 13): "On the other hand, his successor qualified and for almost two years performed the duties of the office and drew the salary * * * while the relator sat by inactive except to protest and to transmit his bills for salary to the Secretary."

ARGUMENT.

## I.

### Relator's Laches Bars His Remedy.

The Court of Appeals rested its judgment of affirmance upon the single but sufficient ground that relator's unexplained delay of twenty-two months before resorting to the courts was a bar to his complaint even were it otherwise well founded. Upon the latter point the court deemed it unnecessary to pass.

The Court of Appeals was clearly right.

This court has very recently (*Duncan Townsite Co.* v. *Lane*, 245 U. S. 308) said of the remedy by mandamus that it is

> an extraordinary remedial process which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion. It issues to remedy a wrong, not to promote one; to compel the performance of a duty which ought to be performed, not to direct an act which will work a public or private mischief or will be within the strict letter of the law but in disregard of its spirit. Although classed as a legal remedy, its issuance is largely controlled by equitable principles.

To a petition seeking mandamus to compel restoration to public office, laches shown by unexplained and unexcused delay in applying for judicial relief is a well recognized ground for refusing to exercise the court's discretion. *Kennedy* v. *Chicago*, 220 Ill. 485; *Schultheis* v. *Chicago*, 240 Ill. 167; *State ex rel. McCabe* v. *Police Board*, 107 La. 162; *Hill* v.

*Mayor of Boston*, 193 Mass. 569; *Stone* v. *Board of Commissioners*, 164 Ky. 640; *People ex rel. Steinson* v. *Board of Education*, 158 N. Y. 125; *People ex rel. Connolly* v. *Board of Education*, 99 N. Y. Supp. 737; and cases cited; *Jones* v. *Police Comm'rs*, 141 Cal. 96.

Nor is laches excused by the fact that the petitioner if he had acted promptly would have been entitled to relief. *Stone* v. *Board*, *ubi supra*, 643; *People ex rel. Connolly* v. *Board of Education*, *ubi supra*, 739.

Unexplained delay for periods much shorter than that here have been held to bar recovery. In the Louisiana case cited, the delay was just under one year; in *People ex rel. Young* v. *Collis*, 6 App. Div. 467, but five months; in *People ex rel. Miller* v. *Sturgis*, 82 App. Div. 580, seventeen months; in *People ex rel. Croft* v. *Keating*, 49 App. Div. 123, nine months.

Nor will the courts exercise discretion in favor of such a petitioner if his case is not in every respect free from doubt both as to the illegality of the removal and as to the propriety, in view of the circumstances and the consequences of favorable action, of granting relief. *Kenneally* v. *Chicago*, 220 Ill. 485; *Campbell* v. *Hunt*, 18 Ariz. 442; *State ex rel. Faires* v. *Buhler*, 90 Mo. 560, 570; *Secucus* v. *Kieseweller*, 83 N. J. L. 227; *New York Life & Fire Insurance Co.* v. *Wilson*, 8 Pet. *291, 302; *State ex rel. Brickman*, v. *Wilson*, 123 Ala. 259, 281; *New Brighton Borough* v. *New Brighton Water Co.*, 247 Pa. 232, 238.

The reasons for the uniform strictness of the courts in dealing with these cases rests upon manifest considerations of justice and of public policy. Even where the removal is unjust and illegal it is none the less a fact. The public service can not be interrupted and if the controversy is not promptly settled the place is filled by another appointee. If, then, the removed office holder sits idly by for a protracted period, he permits a situation to arise in which the interests of the new appointee and of the public will alike be seriously prejudiced if his belated application for mandamus is successful.

Here, for example, relator's successor had two years of tenure of the office before relator did anything effective to challenge the propriety of his removal. The effect of a decision now that he never was properly appointed upon his rights and interests is obvious.

But the reasons of public policy are even more compelling. They have been stated frequently in the cases cited herein and in other cases, but are perhaps nowhere better put than by the Court of Appeals in its opinion in this case. The court says (R. 13):

> On the other hand his successor qualified, and for almost two years performed the duties of the office and drew the salary * * * while relator sat by inactive, except to protest and transmit his bills for salary to the Secretary. It is reasonable to assume that new conditions arose from time to time in conducting the park, calling for changes of policy in its

superintendence, to the extent possibly of requiring that the officer in charge possess different and additional qualifications than formerly had been exacted, all of which suggests the necessity of promptness in challenging the action of the Secretary. The administration of the affairs of the Government are of too vital importance to the public to be interrupted by the application of extraordinary remedies to assuage the protracted grievances of an official who may have been discharged without a technical compliance with the rules of procedure authorizing his dismissal from office. If a discharged official were reinstated under the circumstances of this case, it might result in his immediate discharge by the mere filing of reasons in writing upon which he would not even be entitled to a hearing. Hence, long-delayed action could only be accounted for upon the theory that it would enable a deposed official to accumulate a large salary account for services which he had not performed. Under such circumstances, every rule of public policy demands promptness in asserting claims for relief. We think relator's complaint comes too late.

It is not surprising that relator cites no decisions which accord with his views and that he contents himself with the manifestly unsound assertion that laches is not a defense to such a petition because mandamus is a proceeding at law and not in equity. The fact is that such petitions have almost uniformly failed. They have failed because the matter is one of discretion and of equity and sound public policy.

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The decision of the Court of Appeals was in line with the current of authority and it was right.

It results that it is not necessary to the disposal of the appeal to inquire as to the legality of the action of which relator overtardily complains. Such an examination, however, demonstrates that no injustice is done relator by this result.

## II.

### Relator's removal was not illegal.

It is not disputed that the Secretary of the Interior had the power to remove relator, but it is contended that his power was subject to the limitations imposed by section 6 of the act of August 24, 1912 (37 Stat. 555). That section provides:

> That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing, and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as

> shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same; * * *

It was pointed out by the Court of Appeals that the informality alleged to exist was one of mere technical character (R. 13). But the defendant says that this section, when fairly construed, has no application to relator's case.

The question turns upon the meaning of the words "classified civil service" as used in the statute. The phrase of the original civil service act (22 Stat. 403) was "classification for examination" (section 6, paragraph third) and it was with reference to the provisions for competitive examination—the salient feature of the reform secured by the act—that classification became important.

It is recognized by the commission that the places named upon the "excepted" list differ from positions in the regular classified service, not only with respect to the manner of appointment, but to the rights of the employee.

Rule II, paragraph 3, provides:

> Appointments to be excepted positions named in Schedule A of these rules may be made without examination or upon non-competitive examination, but the proper appointing officer may fill an excepted position as competitive positions are filled, in which case the person appointed will receive *all the*

> *rights of a competitive employee.* (Civil Service Act, Rules, Statutes, and Executive Orders, amended to January 1, 1918, pp. 39.) (Italics mine.)

The conditions surrounding a merely personal appointee are manifestly very different from those attending an appointment after competitive examination. The conditions of personal relationship, and similar considerations which warrant the exemption from the general rules, change with changes of the appointing officer, and the efficiency of the service, which was the expressed object of the statute here invoked, would be defeated by a construction which results in its application to such appointees. A construction which leads to absurd or mischievous results is, under familiar rules, to be avoided.

It is, of course, possible to construe "classified civil service" to include even these excepted positions. The more recent rules of the Commission suggest such use. But it is not necessary so to do, and the words have frequently been used in the restricted sense here suggested. The question, after all, is what Congress meant when it used the words in enacting the statute in question. When the language of cognate acts is considered, the custom of Congress to use the words "classified service" as meaning the competitive service becomes clear and significant.

Reference has already been made to the phrasing of the original civil-service act.

Similarly in the Federal Reserve Act of December 23, 1913 (c. 6, 38 Stat. 251, 262, 263), section 11, paragraph 1, it is provided that—

> The Federal Reserve Board shall be authorized and empowered:
>
> * * * * *
>
> (1) To employ such attorneys, experts, assistants, clerks, or other employees as may be deemed necessary to conduct the business of the board. * * * All such attorneys, experts, assistants, clerks, and other employees shall be appointed without regard to the provisions of the act of January sixteenth, eighteen hundred and eighty-three * * * *Provided*, That nothing herein shall prevent the President from placing said employees in the classified service.

The attorneys, experts, assistants, clerks, and other employees mentioned were from the first in the classified service, if the term is to be construed to include, as relator contends, all the executive departments except laborers and presidential appointees subject to confirmation by the Senate; and the proviso is meaningless. Clearly "classified service" here means the service subject to competitive examination, etc.

Like comment applies to section 2 of the Federal Trade Commission act (38 Stat. 717, 718) which provides that the employees of the commission shall be a part of the "classified civil service" with certain exceptions which are without point if the words

"classified civil service" have the meaning for which relator here contends.

Again, in the Federal Farm Loan Act of 1914 (39 Stat. 360, 361) language like that of the Federal reserve act is used, and the same inferences result.

In the act of August 23, 1912 (37 Stat. 360, 413), approved one day before the statute here invoked, the Civil Service Commission was required (section 4) to establish efficiency ratings "for the classified service," and it was provided that promotions, dismissals, etc., should be governed by the rules of the commission. "Classified service" here can not include the excepted positions, because with them the commission has nothing to do and to them its rules have no application.

Under the rules of the Commission as they existed prior to the passage of this statute (29th Annual Report Civil Service Commission, p. 111) those in the competitive service were entitled to notice and to a written statement of reasons before removal. The sensible construction of the statute is that it was intended to give to this practice the force of law.

The Commission has itself frequently used the phrase in question as referring to what may be called the competitive service and to that only. (See First Ann. Report, pp. 15, 16; rule 5, pp. 45, 46.) And its present rules seem to distinguish between what may be called the unclassified and the classified service. (Civil Service Act, Rules, Statutes, and Executive Orders, amended to Jan. 1, 1918, Rule

II, par. 7, p. 43 read in connection with Schedule A, VII, 3, p. 77.)

In removing relator from office the Secretary of the Interior acted upon an opinion rendered to the Secretary of Commerce June 23, 1913 (30 Op. A. G., 181). This opinion is appended hereto. It is submitted that the point here raised is correctly disposed of.

In any event, stating the matter as favorably as possible to the relator, he is far from showing that the claim of illegality which he raises regarding his removal is free from doubt. In such circumstances mandamus was properly refused.

## CONCLUSION.

For two reasons, therefore, the judgment of the two lower courts should be affirmed. First, because the relator does not establish with that certainty required in proceedings by way of mandamus that his case is well founded. Second, because his inexcusable delay in commencing his suit constituted laches which in itself is a final bar to his success.

LaRue Brown,
*Assistant Attorney General.*

## APPENDIX.

DEPARTMENT OF JUSTICE,
*June 23, 1913.*

SIR: I beg to refer to your letter of April 25 last, requesting an opinion whether section 6 of the Post Office Department appropriation act, approved August 24, 1912 (37 Stat. 555), which prescribes regulations in respect to the removal of persons from the "classified civil service," applies to those occupying what are known as "excepted" positions.

The provision referred to reads:

"Sec. 6. That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same: * * *."

It appears that the Civil Service Commission has advised you in this matter as follows:

"The classified service comprises all those positions which on the one hand are not subject to confirma-

tion by the Senate and on the other hand are not those of mere laborer or workmen. Positions excepted from examination under Schedule A of the rules are therefore within the classified service and section 6 of the act of August 24, 1912, as it applies in direct terms to all classified employees, applies to persons occupying positions excepted from examination under Schedule A."

The definition given by the Civil Service Commission of the classified service in the above statement is substantially that made by section 1 of Rule II of the Civil Service Rules, first promulgated, I am advised, in March, 1903.

Some of the positions declared by the Civil Service Rules to be within the classified service, but excepted in Schedule A thereof from examination, are as follows:

"Two private secretaries or confidential clerks to the head of each of the executive departments and one to each assistant head.

"One private secretary or confidential clerk to each of the heads of bureaus, appointed by the President and confirmed by the Senate, in the executive departments, if authorized by law.

"All persons appointed by the President without confirmation by the Senate.

"Attorneys, assistant attorneys, and special assistant attorneys."

Special exceptions are made in the schedule for each Department.

The result of the interpretation placed by the Civil Service Commission upon section 6 of the act of August 24, 1912, is that persons occupying the most confidential relations with the heads of departments, or for other reasons deemed advisable to be excepted from the general rule as to examination for competitive positions in the public service, can not be re-

moved at the discretion of such heads, but only for such cause as will promote the efficiency of said service, and for reasons given in writing, with notice and opportunity to be heard.

The reasons for requiring this procedure for the removal of persons occupying competitive positions is apparent. Such persons are appointed as the result of examination in accordance with the Civil Service Rules, by which their qualifications for the positions they hold are determined, and they are not merely the personal selection of the head of the department in which they serve. Having no arbitrary right of selection, it may well be said that the head of a department should have no arbitrary right of removal. But these considerations do not apply to persons occupying excepted positions. Since their appointment rests on personal selection, they can logically claim no better tenure. But the right of personal selection would be defeated if a person so selected could not be removed at the pleasure of the appointing power.

If, therefore, the restrictions in the act in question are applied to persons occupying excepted positions, one of the chief purposes of such exceptions—which are expressly authorized by the civil service act (sec. 7) and rules (Rule II, sec. 3)—will be defeated. But there is nothing in the history of the act which suggests that Congress had any intention to limit the right of the appointing power to select persons for the excepted positions.

The specific cause for this legislation was a controversy about the Railway Mail Service (48 Cong. Rec. 4653–4657, 4988–5009, 5197–5241, 5625–5638, 9952–9953, 10670–10676), the positions in which are competitive, and no question of excepted positions

was involved or mentioned in the debates on the matter.

The situation here appears to be analogous to that presented in the *Holy Trinity Church case*, 143 U. S. 457, where it was held that a thing within the language of the statute was not within the statute because not within its spirit and purpose, as shown by its history and the evil intended to be remedied.

For the reasons stated, I am of the opinion that the term "classified civil service," in section 6 of the act of August 24, 1912, was used in the more popular sense of the competitive service and therefore should not be held to include excepted positions, unless such positions have been filled as competitive positions are filled, in which event, under Rule II, paragraph 3, of the Civil Service Rules, the person appointed is entitled to all the rights of a competitive employee.

Respectfully,

WILLIAM R. HARR,
*Assistant Attorney General.*

Approved:

J. C. MCREYNOLDS.

To the SECRETARY OF COMMERCE.